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The situation of human rights and fundamental freedoms of indigenous people

Note by the Secretary-General

The Secretary-General has the honour to transmit to members of the General Assembly the report of Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, pursuant to paragraph 14 of Commission on Human Rights resolution 62/2004.

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Summary

The present report, on activities carried out from 10 August 2001 to 10 August 2004, highlights some concerns which the Special Rapporteur deems to be worthy of special and urgent attention.

Since his appointment in 2001, the Special Rapporteur has focused on three main areas of work: thematic investigation of issues that have an impact on the situation of human rights and fundamental freedoms of indigenous people; country visits; and communication with governments with respect to allegations of violations of indigenous people's human rights and fundamental freedoms throughout the world.

During the period under review, the Special Rapporteur received information about a number of situations where indigenous people's human rights and fundamental freedoms relating to land, territory, the environment and natural resources; the administration of justice and legal conflicts; poverty, standards of living and sustainable development; language, culture and education; self-government, autonomy, political participation and the right to self-determination had been violated. The Special Rapporteur was also apprised of situations relating to matters such as the failure to apply the international anti-discrimination standards in force; death threats against indigenous leaders; forced disappearances of indigenous activists and representatives; violence and deaths of indigenous people through excessive use of force by officers of the police and security forces during situations of social conflict; extrajudiciary executions of indigenous people attributed to paramilitary groups or private forces either working with or tolerated by the State, as well as forced displacements due to the implementation of development projects, social conflict or political and economic insecurity.

The country visits constitute a crucial component of the Special Rapporteur's mandate and an excellent vehicle for on-the-spot analysis and understanding of the situation of indigenous peoples. During the period under review, the Special Rapporteur undertook official visits to Chile, Colombia, Canada, Guatemala, Mexico and the Philippines and visited a number of communities in other areas at the invitation of various indigenous peoples of the Nordic countries, southern Africa and Japan.

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

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I. Introduction

1. This is the first report being submitted by Mr. Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, to the General Assembly. During the period of his mandate, the Special Rapporteur submitted three reports to the Commission on Human Rights: E/CN.4/2002/97 and Add.1, E/CN.4/2003/90 and Add.1-3 and E/CN.4/2004/80 and Add.1-4/Corr.1. The report includes the main topics considered by the Special Rapporteur during the first three years of his mandate, which he took up in June 2001.

2. This report covers the activities carried out during the period 11 August 2001-10 August 2004. It underscores certain issues of concern which, in the Special Rapporteur's view, require urgent and immediate attention. Owing to space constraints and in order to avoid needless duplication, reference will be made where necessary to previous reports on the issue where the questions raised are dealt with at length.

3. The Special Rapporteur would like to draw the General Assembly's attention to the report he submitted to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/97 and Add.1) in which he described, inter alia, his methods of work and proposed, based on the issues of greatest concern to the indigenous peoples, a series of topics on which he would focus his yearly studies.

II. Mandate

A. Functions

4. The Commission on Human rights in its resolution 2001/57 entrusted the Special Rapporteur, inter alia, with the following functions: to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people themselves, their communities and organizations, on violations of their human rights and fundamental freedoms; formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people; and work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

5. The functions covered by the mandate are described in greater detail in other reports of the Special Rapporteur to the Commission on Human Rights (E/CN.4/2002/97, paras. 2 and 3, and E/CN.4/2004/80, para. 2).

B. Cases of violations of indigenous people's human rights and fundamental freedoms that give rise to action by the Special Rapporteur

6. Since his appointment, the Special Rapporteur has been receiving a large number of communications on allegations of violations of the human rights and

fundamental freedoms of indigenous peoples. The main sources of these communications are non-governmental organizations, indigenous organizations, intergovernmental organizations and other United Nations procedures concerned with the protection of human rights. If the complaints are considered justified, the Special Rapporteur sends communications to the States mentioned; these communications may take the form of "urgent appeals" in cases of imminent danger of violations of the human rights of individuals, or even entire indigenous communities, or "letters of allegation" in cases of a less urgent character. An effort is also made to follow up on these communications and the Special Rapporteur reports thereon to the Commission in his annual report.

7. The situations that have led to the intervention of the Special Rapporteur during the period under review are described in the reports to the Commission on Human Rights (E/CN.4/2002/97/Add.1, E/CN.4/2003/90/Add.1 and E/CN.4/2004/80/Add.1).

C. Legal framework

8. The international legal framework for the Special Rapporteur's work is set out in his initial report (E/CN.4/2002/97, paras. 11 to 14) and in addendum 1 to his report to the sixtieth session of the Commission (E/CN.4/2004/80/Add.1, paras. 80 to 99). Since his appointment, the Special Rapporteur has in general focused activities under his mandate on three main areas of work: thematic investigation of issues that have an impact on the situation of human rights and fundamental freedoms of indigenous peoples; country visits; and communications with governments concerning allegations of violations of the human rights and fundamental freedoms of indigenous peoples the world over.

III. Status of the issue: progress and major human rights problems affecting indigenous peoples

9. During the years covered by the International Decade of the World's Indigenous People 1995-2004 proclaimed by the General Assembly in its resolution 48/163, considerable progress has been made at the national and international levels with respect to the recognition and promotion of the human rights of indigenous people, including the 1989 Convention concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization (ILO) and the adoption of relevant national legislation in that area. The Special Rapporteur urges States that have not yet done so to ratify the above-mentioned Convention. It is very important for the indigenous people that the draft United Nations declaration on the rights of indigenous peoples, prepared by the working group on indigenous people and adopted by the Sub-Commission on the Promotion and Protection of Human Rights, should be adopted. The draft is currently under review by the working group of the Commission established pursuant to Commission resolution 1995/32. Despite the progress achieved at the international level, the Special Rapporteur finds it regrettable that negotiations on the draft declaration are still deadlocked. However, he acknowledges the efforts made by various delegations during the ninth session of the working group (see E/CN.4/2004/81), which is considering the draft declaration, and urges the parties to adopt, even if on a preliminary basis, those articles where a

basic consensus exists as that would facilitate the negotiation of other articles on which it is more difficult to reach a consensus.

10. Although many countries have introduced legislation favourable to indigenous peoples, these advances at the national level are eclipsed by continuing human rights violations and problems faced by millions of indigenous people in many countries. Indigenous peoples the world over are usually among the most marginalized and dispossessed sectors of society, because they suffer discrimination and face prejudices that are often perpetuated within societies. Despite the existence of protective legislation, the rights of indigenous peoples are very often denied in practice.

11. The information received by the Special Rapporteur points to major shortcomings in the promotion and protection of the human rights and basic freedoms of indigenous peoples in all regions. The major issues involving indigenous rights relate to land, territory, the environment and natural resources; the administration of justice and legal conflicts; poverty, standards of living and sustainable development; language, culture and education; self-government, autonomy, political participation and the right to self-determination.

12. The Special Rapporteur was also informed of situations relating to matters such as the failure to apply the international anti-discrimination standards in force, death threats against indigenous leaders; forced disappearances of indigenous activists and representatives, violence, and the deaths of indigenous people through excessive use of force by officers of the police and security forces during situations of social conflict; extrajudicial executions of indigenous people attributed to paramilitary groups or private forces, either working with or tolerated by the State, as well as forced displacements due to the implementation of development projects, social conflict or political and economic insecurity. The Special Rapporteur also received complaints of serious violations of the rights of indigenous children, including murder, forced recruitment by armed groups or trafficking in organs.

13. When there is not sufficient machinery in place to protect the human rights of indigenous peoples under national laws, it becomes more difficult to apply the relevant international standards. The reports of the Special Rapporteur to the Commission on Human Rights include detailed descriptions of these issues. The Special Rapporteur also wishes to draw the attention of the General Assembly to certain facts and trends relating to the human rights of indigenous peoples, deriving from his missions to Guatemala (2002), Philippines (2002), Mexico (2003), Chile (2003), Colombia (2004) and Canada (2004), as well as from a variety of other sources.

A. Rights to land, territory and access to natural resources

14. From time immemorial indigenous peoples have maintained a special relationship with the land, their source of livelihood and sustenance and the basis of their very existence as communities. The right to own, occupy and use land is inherent in the self-conception of indigenous peoples and generally it is in the local community, the tribe, the indigenous nation or group that this right is vested. For economically productive purposes this land may be divided into plots and used individually or on a family basis, yet much of it is regularly restricted for community use only (forests, pastures, fisheries, and so on), and the social and

moral ownership belongs to the community. This has often been recognized in the national legal system, but just as often certain kinds of economic interests have attempted to turn communal possession into individual private ownership, a process which began during the colonial period in many countries and intensified during post-colonial times.

15. Indigenous peoples everywhere have been gradually dispossessed of their ancestral lands. The defence of their farming and territorial rights is one of the most urgent issues involved in the protection of their human rights, often giving rise to negotiations, disputes and conflicts. The Special Rapporteur has gathered a wealth of documentation and information concerning these questions in all the countries he visited during the three years of his mandate. In some places the courts have handed down sentences favourable to indigenous rights (as in Canada, Colombia and the Philippines), while in others indigenous peoples have had to apply for the protection of the international courts, as in the case of the Awas Tingni in Nicaragua before the Inter-American Court of Human Rights.

16. The demand by indigenous peoples for the recognition of their ancestral lands sometimes brings them into conflict with the interests of States, which may consider that such recognition undermines the unity and integrity of the nation. However, examples such as that of the Nunavut in Canada demonstrate that recognizing indigenous land rights does not detract from the unity of the State and may, at the same time, satisfy the demands and aspirations of an aboriginal people.

17. The land rights issue cannot be separated from the issue of access to, and use of natural resources by indigenous communities, and is an essential issue for the survival of indigenous peoples, which must be carefully studied, since access to the natural resources present in their habitats is essential to their economic and social development.

18. One issue that concerns indigenous communities relates to the planning, design and execution of major development projects on their lands. Wherever large-scale projects are executed in areas occupied by indigenous peoples, it is likely that their communities will undergo profound social and economic changes that the competent authorities are often incapable of understanding, much less anticipating. Sometimes the impact will be beneficial, very often it is devastating, but it is never negligible. That is why, in his second report to the Commission on Human Rights, the Special Rapporteur focused on the impact of major development projects on the human rights of indigenous peoples. Indigenous peoples bear a disproportionate share of the social and human costs of resource-intensive and resource-extractive industries, large dams and other infrastructure projects, logging and plantations, bio-prospecting, industrial fishing and farming, and also eco-tourism and imposed conservation projects.

19. No activity has better illustrated this situation than the construction of large multipurpose dams that affect indigenous areas. The second report of the Special Rapporteur provides information on the effects of dams on indigenous peoples in Costa Rica, Chile, Colombia, India and the Philippines, among others. It also reports on the effects of other kinds of major development activities on indigenous peoples' rights, such as the Puebla Panama Plan in Mesoamerica.

20. The principal effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement,

depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence. The Special Rapporteur therefore calls for the long-term economic, social and cultural effects of major development projects on the livelihood, identity, social organization and well-being of indigenous communities to be included in the assessment of their expected outcomes, and to be closely monitored on an ongoing basis. This process must include analysis of health and nutrition status, migration and resettlement, changes in economic activities, standards of living, as well as cultural transformations and socio-psychological conditions, with special attention given to women and children. It is also essential to respect the right of indigenous peoples to be consulted and give their free, informed and prior consent to any development project having such effects.

21. This is not presently the case in many countries in which such projects are implemented with effects on indigenous peoples and communities that may be characterized as serious violations of their human rights. The second report of the Special Rapporteur details some specific cases. Among other effects, it refers to forced displacements, dramatic changes in the subsistence economy, destruction of the environment, failure to pay promised or negotiated compensation, as well as other consequences that have had a negative impact on the living conditions of indigenous peoples.

B. Social organization and local government

22. Since time immemorial, indigenous communities have had their own forms of self-government. During the period of colonization and the expansion of nation States, indigenous peoples were incorporated into State structures, generally against their will, and their forms of local government were modified or adapted to bring them into line with the interests and needs of the State. These situations sparked tensions which often resulted in conflict and violence. Indigenous organizations seek to preserve or regain the right to local (and sometimes regional) self-government, justly considering this right as part of the fundamental freedoms which international law accords to all peoples.

23. Through negotiations and treaties, constitutional reform or special legislation, indigenous peoples have been able in numerous instances to establish agreements with States regarding this right to self-government. In other cases, however, this has not been possible, and national- or regional-level government units still take it upon themselves to administer the affairs of indigenous communities.

C. Administration of justice: the conflict between legislation and customary law

24. One of the areas that most clearly illustrates the vulnerable nature of indigenous peoples' human rights is the administration of justice and the failure to recognize customary indigenous law. The Special Rapporteur therefore focused his third thematic report on the issue of justice and its implications for the human rights of indigenous peoples, with particular emphasis on the operation of judicial institutions and bodies such as courts and tribunals, official registries and land title

offices, prisons and correctional centres, designated law enforcement units, public prosecutors and legal services of all kinds, including all kinds of legal aid clinics.

25. Due to the flexible and makeshift manner in which national legislation concerning indigenous peoples has developed over the years, conflicts have often arisen between different laws, and this can have implications for the protection of rights accorded to indigenous peoples in various constitutions. The Special Rapporteur notes that there may be incompatibility between such legislation and other sectoral laws (such as legislation regarding the environment or the exploitation of natural resources, or the titling of private landholdings). When asked to rule on competitive claims on such issues (for example, in the cases of the Constitutional Court of Colombia or Canada's provincial courts) the courts often render judgements that protect the rights of indigenous communities, but just as often they may hand down rulings that are detrimental to these rights. The Special Rapporteur has recommended that the rights of indigenous peoples as set out in national and international laws should have priority over any other interests and has called upon governments to make efforts to adjust their legislations accordingly.

26. Moreover, indigenous peoples are demanding the recognition of their cultures and customary legal systems in the administration of justice. The non-recognition of native customary laws is another indication of human rights violations that lead to abuses being committed in the justice system. The non-recognition of indigenous law is part of a pattern of the denial of indigenous cultures, societies and identities in colonial and post-colonial States, and the difficulty that modern States have had in recognizing their own multicultural make-up. In many countries, a monist conception of national law prevents the adequate recognition of plural legal traditions and leads to the subordination of customary legal systems to one official legal norm.

27. In these circumstances, non-official legal traditions have hardly survived at all, or have become clandestine. While legal security is provided in the courts in the framework of one official judicial system, indigenous peoples, whose own concept of legality is ignored, suffer from legal insecurity in the official system and their legal practices are often criminalized. Given the discrimination existing in the national judicial systems, it is not surprising that many indigenous peoples distrust those systems and that many ask for greater control over family, civil and criminal matters. This reflects questions relating to self-government and self-determination. To remedy the many injustices and indignities that indigenous peoples suffer in the justice system, alternative ways of dispensing justice and solving social conflicts have been attempted in many countries. Some States have made progress in recent years in recognizing and taking account of such customary practices, but others are still reluctant to modify their own legal structures accordingly.

28. The Special Rapporteur believes that a fair and effective system for the administration of justice is crucial in fostering reconciliation, peace, stability and development among indigenous peoples. Some countries have recognized the needs of indigenous peoples in the area of justice, creating institutions specifically designed to protect their human rights. Moreover, it is clear that legal institutions, lawmakers and public administrations are increasingly willing to recognize the importance of indigenous customary law.

29. In many countries, however, indigenous peoples do not have equal access to the justice system and encounter discrimination of all kinds in the operation of the

justice system. This is due to persistent racism in many societies, ignorance of indigenous cultures, the failure by official State institutions to accept linguistic and cultural differences and ignorance of indigenous law and customs. As a result, indigenous people tend to be overrepresented in the criminal justice system, which reflects the prevailing inequality and injustice.

30. The justice system is also quite frequently used to suppress indigenous communities' protests and acts of resistance in defence of their rights. In many cases, socially and politically motivated demonstrations by indigenous people have been declared illegal. During the period under review, the Special Rapporteur received many reports of serious failures to ensure the right to due process of so-called "indigenous people" and disturbing accounts from people who claim to have been subjected to various forms of physical and psychological abuse while in detention; this situation is even more serious in the case of indigenous women.

31. The Special Rapporteur therefore recommends that governments should carry out sweeping reviews and, where necessary, reforms of their justice systems in order to protect the rights of indigenous peoples more effectively. These reforms should ensure, inter alia, respect for indigenous peoples' customary law; the establishment of alternative legal mechanisms; respect for their language and culture in the courts and tribunals and, generally speaking, throughout the justice system; and greater participation of indigenous people in the reform process. The Special Rapporteur has also recommended to Governments that the many reports of abuse of indigenous people by the security forces should be investigated in order to put an end to the impunity with which such acts are quite often committed.

D. Poverty and access to basic services

32. In most countries, indigenous people are among the poorest social groups and their standard of living is considered to be below average in many ways. Studies have shown that they face high infant mortality rates, below-average levels of nutrition, inadequate public services, difficulty of access to social welfare agencies, social services of a quality below the recommended norm, serious health problems, inadequate housing and accommodations and, overall, a low level of human development indicators. In confirmation of other information which the Special Rapporteur has received regarding adequate housing as a key aspect of the right to a decent standard of living, a position asserted by the Commission on Human Rights, the Special Rapporteur notes that the quality of indigenous people's housing is generally far below the minimum recommended by international organizations. This is true not only in rural areas, but also in the cities.

33. One of the recurrent patterns noted, and a source of concern for the Special Rapporteur, is the relationship between ethnic origin and poverty. In Guatemala, for example, the departments in which there is the highest concentration of indigenous people are also those which experience the greatest poverty and extreme poverty. At the time of his visit, 65 per cent of the indigenous population had no access to a water supply network, over 80 per cent were not connected to sewerage systems and half were not connected to the electricity grid, according to the United Nations Human Rights Verification Mission in Guatemala (MINUGUA). One reason for the increase in rural poverty among indigenous people in recent years is the fall in world coffee prices; coffee is one of the traditional export products most widely

grown by indigenous farmers. In Chile, indigenous people live at poverty levels significantly higher than those of the non-indigenous population. One of the greatest challenges for that country is to strike a balance between its economic and social development and the protection of the right of indigenous communities to an ethnic identity. The same is true of Mexico, where indigenous communities display lower human development indicators and higher levels of poverty than urban and non-indigenous communities.

34. Some States have recognized these problems and are promoting special policies and measures aimed at improving the standard of living of indigenous peoples. In other areas, public policies are not so designed and the needs of indigenous populations have not been taken into account. Recent experience has shown that effective results which make a real difference in individual and community life require that economic growth go hand in hand with social concerns and that specific public policies for indigenous peoples be developed, with their active participation, in order to address their particular problems. In Canada, the Special Rapporteur was informed of a high incidence of diabetes in the aboriginal population and of disturbingly high suicide rates among indigenous youths as a consequence of the radical lifestyle changes imposed by government policy during the past few generations.

35. The goal of human rights-based sustainable development, a concept endorsed by the General Assembly, is particularly significant for indigenous peoples. It has been noted that the traditional approach to economic development, which focused solely on growth, has not yielded the desired results; social and cultural objectives must be included, as noted in the Human Development Report 2004. Failure to do so can lead to serious violations of the rights of indigenous peoples, as has been the case in the past. If the Millennium Development Goals are to be achieved, particular attention must be paid to the rights of indigenous peoples.

E. Political representation, autonomy and self-determination

36. Indigenous self-organization has made considerable progress over the years. From the local level to the regional, national and international levels, indigenous peoples' associations have become political and social actors in their own right, as witnessed by their continuing participation in the yearly sessions of the Working Group on Indigenous Populations and of the Permanent Forum on Indigenous Issues. These organizations speak with many voices, but on the fundamental issues of their human rights, their objectives and their aspirations, they are usually in remarkable agreement. In some countries, they are now recognized as legitimate partners and interlocutors of Governments and other social sectors on the national scene. In other countries, the going has been more difficult; their organizations may not be officially recognized and their right to free association may not be completely respected.

37. To the extent that the rights of indigenous peoples are not fully represented within existing power structures, their organizations and other human rights advocacy associations that take up their cause may also become victims of abuses and be denied adequate protection under the law. In recent years, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Labour Organization Committee of Experts, the Inter-American Commission on

Human Rights and other bodies have received numerous communications to this effect.

38. Beyond respect for their human rights, indigenous organizations also claim the right to political representation as indigenous peoples at the national level, an issue which may or may not be compatible with existing political structures. The insistent demand for some form of autonomy is not always met by existing legislation, although this has been achieved in some countries. A case in point is the Constitution of the Philippines, which recognizes the right of the Muslim and Cordillera peoples to self-determination in the form of autonomy, but the latter are still awaiting the creation of their autonomous region. In Mexico, the Constitution establishes the right of indigenous peoples to self-determination in the form of autonomy and makes the state governments responsible for promulgating the necessary legislation, a procedure which has been challenged by indigenous organizations. While the constitutional reform took place in 2001, there has been no progress in the area of indigenous peoples' autonomy to date. Indigenous peoples' territorial entities or reservations are defined as autonomous units in the Colombian Constitution, but their administrative integration has not yet been achieved. Some of Panama's indigenous regions are autonomous.

39. International opinion remains divided on the question of whether the principle of the right of peoples to self-determination is applicable to indigenous peoples; this is one of the reasons for the lack of progress on the draft declaration on the rights of indigenous peoples. The international movement of indigenous peoples is calling — rightly, in the Special Rapporteur's view — for this right to be recognized and respected, but various reasons of State have been brandished by their opponents in yet another episode of the old debate between human rights and State interests.

F. Education and culture

40. Mention must be made in the first place of the importance of language to the identity of any people. Language is not only a medium of communication, but also a crucial element in the structuring of thought processes and in providing meaning to the natural and social environment of any person in his or her society. Indigenous language communities provide their members with the full range of cultural meanings attached to the use of a shared idiom. Most indigenous languages are very ancient and while they have undergone changes, they are transmitted from generation to generation and thereby help preserve the continuity of a language community and its culture.

41. Language rights are an essential element of the cultural rights that all persons enjoy under international human rights standards. The right to one's own language pertains not only to individuals, but also to communities, nations and peoples. If a language community is denied the collective and public use of its language (for example, in schools, the media, the courts and the administration), then any individual's right to this language is severely curtailed. Therefore, language rights are nowadays proclaimed as human rights, which entail respect, promotion and promotion by others and especially by State authorities. Numerous States have now adopted legislation concerning the protection of regional, minority or indigenous languages, as New Zealand has done with the Maori language.

42. From a historical perspective, however, State policies have not always recognized or protected the languages spoken by indigenous peoples or linguistic minorities. On the contrary, the intention of official linguistic, educational and cultural policies has often been the assimilation of such groups into the national mainstream, thus leading to language and culture loss. In Canada, the bitter memory of "residential schools" did much to destroy the cultural identity of the First Nations for at least an entire generation. Similar situations exist in the Latin American countries. More recently, there has been an awareness that such processes violate the human rights of members of the affected language communities.

43. Nowadays, in some countries indigenous languages are recognized as national languages, at least in the regions in which they are widely used, and sometimes they have been accorded official status of some kind. In other cases, they may no longer be actually prohibited, but merely tolerated as a private medium of communication without being accorded any official status. Article 30 of the Convention on the Rights of the Child is clear: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language." The United Nations Educational, Scientific and Cultural Organization (UNESCO) is currently preparing a convention on the diversity of cultural contents and artistic expressions which will reaffirm these rights.

44. The denial of the right to practice one's own culture, religion or language may take many forms. Often, when the social and institutional environment is unfavourable to the preservation and development of indigenous cultures and languages, this right is in fact denied even when there is no formal prohibition or restriction involved. The use of the mother tongue in education and public communications is an important issue in the definition of the human rights of indigenous peoples. Bilingual and intercultural education has become educational policy for indigenous communities in many parts of the world.

45. The idea of multicultural or intercultural education raises certain difficulties because it involves not only local schools, but also regional and national school systems and the educational philosophy of any country where there are indigenous peoples. The notion of multicultural and intercultural education leads to a complete review of educational contents and methods in countries where it is applied. It basically means that the cultural diversity of the country is reflected in the curriculum and the preservation and promotion of cultural diversity become an objective compatible with democratic governance and the enjoyment of human rights by all. In some cases, this approach will require the revision of traditional ideas held by majority or dominant cultural groups about national culture and identity. Indigenous peoples' organizations often need to remind the world that their own cultural specificities are also contributions to a universal culture and not mere relics of a disappearing past. The rights of indigenous peoples to culture and education (the whole gamut of cultural rights, in fact) include the right to the enjoyment and protection of their own cultures in a wider, multicultural world.

46. The preservation of indigenous cultures (including tangible and intangible elements, arts and artefacts, traditions, knowledge systems, intellectual property rights, ecosystem management, spirituality and so on) is an essential component of a

comprehensive indigenous human rights package. This also applies to the right of indigenous peoples to freely develop their cultures, including through free access to the mass communications media and the conservation of their sacred sites and objects and of their traditions.

47. The idea of multiculturalism does not imply the artificial preservation of indigenous (or tribal) cultures in some sort of museum, but only the right of every human community to live by the standards and visions of its own culture. Some cultures change over time, but whether there will ever be one universal culture or any number of interrelated local, regional, ethnic and national cultures, only time will tell. In human rights terms, it is clear that cultural rights pertain to every individual, yet these rights can only be fully enjoyed by all persons in community with other members of the group. Thus, indigenous people require guarantees that their cultures will receive the respect and consideration that other groups in society also enjoy, and that they will have the freedom to develop their cultural creativity in communion with other members of their group. At the international level, these issues have been taken up by UNESCO and the World Intellectual Property Organization (WIPO) with regard to the cultural heritage and intellectual property of indigenous peoples.

48. The cultural rights of indigenous peoples are also addressed in a number of national legislations, though not always with the clear intent of promoting and enhancing them. For example, in the Philippines, the Constitution includes several provisions concerning the rights of the "cultural communities", and article XIV, paragraph 7, states that "the State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions". The constitutions of some Latin American countries contain similar provisions. In Japan, the Ainu culture is legally recognized, but it is not established as an inherent right of the Ainu people.

49. It was pointed out above that indigenous cultures are closely linked to the concept of land rights and the occupation and possession of territorial homelands. A question frequently asked of indigenous peoples is whether their cultural identities can survive in a de-territorialized environment, that is, in dispersed settlements and urban centres where indigenous migrants live interspersed with non-indigenous populations. In many countries, indigenous people have settled in the large cities; examples include Baguio City, Philippines; Santiago de Chile; and Winnipeg, Canada. Thousands of indigenous migrants from various Mexican states are now living in cities in the United States of America. The human rights of indigenous migrants are an issue of special concern, as the Special Rapporteur on the human rights of migrants of the Commission on Human Rights has noted.

50. How the cultural, educational and linguistic rights of indigenous peoples are being protected — or not — under varying circumstances is an empirical question that needs more comparative research. UNESCO has recommended that States take special measures to ensure the protection and promotion of indigenous cultures. The African Commission on Human and Peoples' Rights has set out guidelines that require States to take specific measures aimed at the promotion of cultural identity and the "awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous sectors of the populations". The Commission has established a working group on the rights of indigenous populations and communities and is also encouraging indigenous peoples of Africa, among other

things, to apply for observer status at the African Commission, to bring communications before it for consideration, to lobby the members of the Commission who come from areas where there are indigenous peoples, as well as to urge the appointment of a special rapporteur of the African Commission on indigenous issues in Africa.

G. Indigenous women and girls

51. Special attention should be paid at the national and international levels to violations of the rights of women, and especially of indigenous adolescents and girls; in many countries, they are subjected to various forms of violence, exploitation and discrimination, situations which have been brought forcefully to the Special Rapporteur's attention. In the context of the status of women, on the one hand, and girls, on the other, that of indigenous women and girls does not appear to have drawn much attention from the authorities or the media. Nevertheless, such violations may be very serious, including physical abuse, rape and sexual harassment; extreme economic exploitation; denial of their civil rights; discrimination in the justice system; racism; and exclusion from public social services, especially in the areas of health, housing and education. The particularly sensitive situation of indigenous girls is of paramount importance in as much as they are often the most vulnerable victims of discrimination, exclusion and marginalization. The Special Rapporteur appeals to the national and international authorities and bodies responsible for promoting gender equality and the rights of the child to pay particular attention to indigenous children and adolescents throughout the world.

52. According to reports received, the situation of indigenous women and girls during periods of armed conflict is particularly serious. During his mission to Colombia, the Special Rapporteur heard many accounts of the devastating effects of armed conflict on indigenous women and girls, who are subjected to indiscriminate murder, massive displacements, forced recruitment of their sons into the ranks of armed groups, rape and destruction of their land by guerrilla and paramilitary groups and other participants in bloody armed conflicts.

53. Indigenous children make up the most vulnerable segment of society. In various parts of the world, they suffer disproportionately from malnutrition, poverty and discrimination. They are sometimes subjected to police brutality, and their human rights are violated with impunity. Because many schools fail to respect their cultural and linguistic specificity, indigenous children also tend to be viewed as incompetent or retarded students; this worsens the vicious circle of marginalization and discrimination.

54. Although the Committee on the Rights of the Child, UNICEF and UNESCO have made commendable efforts to examine this issue in greater depth, the Special Rapporteur wishes to draw the attention of the General Assembly to the lack of substantive studies and disaggregated data at country level regarding indigenous children. If significant progress is to be made in providing support and assistance for a group which is often neglected and forgotten by the rest of the population, effective action must be taken in that regard.

IV. Visits and activities

55. A crucial part of the mandate of the Commission's Special Rapporteur is the practice of visiting countries to begin a constructive dialogue with their Governments, indigenous communities and other relevant organizations and to inform the Commission on Human Rights about the situation of indigenous peoples. Visits are an excellent path to on-the-spot understanding and analysis of the situation of indigenous peoples in different circumstances and are an important tool for raising awareness within the international community.

56. The Special Rapporteur's fact-finding missions took him to Guatemala and the Philippines in 2002, Mexico and Chile in 2003 and Colombia and Canada in 2004, at the invitation of those countries' Governments. During the visits, he had meetings with the States' Heads of Government and senior officials, with representatives of civil society and with representatives of many indigenous communities. He believes that the fact-finding missions are a clear sign of growing cooperation between Governments and the United Nations regarding the human rights of indigenous people. This report provides a summary of main conclusions and recommendations.

57. The Special Rapporteur visited Guatemala from 1 to 11 September 2002 (see E/CN.4/2003/90/Add.2). Indigenous people (around 12 million Maya, Xinca and Garífuna) experience political exclusion, cultural discrimination and economic marginalization within the country's society. One of the fundamental problems affecting them relates to the right to land: the lack of access to land, the lack of response to land-related claims, lack of respect for traditional places and forced resettlement of indigenous peoples as a result of economic development projects create a situation of rising social tensions. The indigenous peoples complain of difficult access to the courts, discrimination against their customary law and the lack of interpreters using indigenous languages in the courts. In the field of education — a priority area for the indigenous peoples — there are as yet insufficient trained teachers, and other educational resources are inadequate. The Special Rapporteur recommends that the Government should expand its activities and upgrade the policies affecting the indigenous peoples, and renew its commitment to the implementation of the Peace Agreements. He also recommends that the indigenous peoples' organizations and other non-governmental organizations should take steps to draw up a joint programme to promote the implementation of the Agreement on Identity and Rights of Indigenous People, which forms part of the Peace Agreements signed in 1996.

58. During his official visit to the Philippines in December 2002 (see E/CN.4/2003/90/Add.3), the Special Rapporteur found a lack of implementation of laws relating to the right to land, self-determination and cultural integrity of indigenous peoples. The main problems which those groups faced were the negative effects of a number of development projects. Indigenous resistance and protest against such projects were frequently countered by military force involving numerous human rights abuses. The Special Rapporteur made a number of recommendations. Notably, he considered it important for the Government to carry out an effective investigation of the numerous human rights violations committed against indigenous peoples, and take all necessary measures to prevent a recurrence. Given divisive effects on indigenous communities caused by irregular military units or paramilitary groups, the Special Rapporteur urged the Government to implement a programme to demilitarize indigenous peoples' territories. He also recommended

that traditional indigenous peoples' land rights should be recognized, instead of favouring mining companies.

59. The Special Rapporteur's mission to Mexico in June 2003 (see E/CN.4/2004/80/Add.2) had found that human rights violations occurred mostly in the frequent local and municipal agrarian and political conflicts, and in the administration of justice, which was seriously deficient. The 2001 reform of the Constitution had not met the aspirations and demands of the indigenous movement and had also failed to establish constructive dialogue between indigenous representatives and the government of the State of Chiapas, where there was ongoing internal conflict, triggered by the Zapatista uprising in 1994. The Special Rapporteur recommended that the Government of Mexico should pay urgent attention to preventing and resolving such social conflict, that it should carry out judicial reform to guarantee protection of indigenous peoples' human rights and that it should revise the constitutional reform of 2001 so that such rights could be safeguarded and peace in Chiapas could be achieved.

60. During his visit to Chile in July 2003 (see E/CN.4/2004/80/Add.3), the Special Rapporteur found several human rights issues which were causing Chile's indigenous people serious concern. The majority of indigenous people, particularly the Mapuche in Araucanía, suffer from high levels of poverty and low levels of human development. The participatory mechanisms envisaged in the Indigenous Peoples Act (No. 19.253, adopted by the Government in ' '93) have not managed to expand opportunities for autonomy, as demanded b any indigenous groups. Historically, one of the most serious problems affecti idigenous peoples relates to land ownership and territorial rights: the land owne the Mapuche is extremely limited and overexploited; the communities' lands are remote locations on private property, and often contaminated because of forestry activity. Most indigenous communities are still not benefiting from the State bilingual education programme and the education system has not fully met the demand from indigenous people for the protection and promotion of their traditional culture. The recommendations of the Special Rapporteur include calls for a programme to cut poverty in indigenous communities, for the Government to pay particular attention to the prevention and resolution of conflicts over land tenure and use and for there to be a high level of bilingual education.

61. The Special Rapporteur has held consultations with government representatives to explore the possibility of undertaking fact-finding visits to various countries, and to examine how his recommendations could be followed up and whether assistance could be given to translate them into action. The Special Rapporteur suggests that such countries' government authorities and other organizations with a stake in the issues should reflect on the matters and recommendations appearing in his reports. They could serve as a useful instrument to promote and protect the human rights and fundamental freedoms of indigenous people.

62. The Special Rapporteur has also received large numbers of invitations to visit from the indigenous peoples and indigenous peoples' organizations of various continents, but has unfortunately been unable to accept all of them. During the period under review, the Special Rapporteur visited Ainu communities in Hokkaido (Japan), in 2002; various First Nations in British Columbia, Saskatchewan, Manitoba, Ontario and Nova Scotia (Canada) in 2002; a community of displaced

Basarwa in Botswana, also in 2002; various indigenous communities in Mexico, in 2003; and the Sami Parliament (Norway and Finland), also in 2003. He was also able to discuss the human rights of indigenous people with government delegations and indigenous peoples' representatives from many countries in various United Nations forums.

63. The Special Rapporteur is particularly concerned that restrictions in the document preparation system have sometimes prevented him from suitably reflecting the outcome of his fact-finding missions, and that his currently limited resources may prevent him from responding effectively to appeals and requirements for on-the-spot visits.

64. Finally, the Special Rapporteur wishes to inform the General Assembly that he has begun a process of following up the recommendations of his reports during his visits. In that connection, and always in close consultation with government, civil society and United Nations agencies, an analysis is made of the most appropriate ways of helping national institutions to put those recommendations into practice. Such follow-up work has begun in Guatemala and Mexico, in collaboration with the Office of the United Nations High Commissioner for Human Rights, and it is hoped that the same will be done in other countries which receive visits. The Special Rapporteur urges countries and institutions to combine their efforts to implement recommendations aimed at making progress in promoting and protecting the human rights of the world's indigenous peoples.

V. Conclusions and recommendations

65. **The Special Rapporteur would like to add the following comments to the final remarks and recommendations in his reports to the Commission on Human Rights.**

66. **Violations of the human rights of indigenous people occur for a variety of reasons, described in the reports. Although in some cases they are being tackled through specific programmes and proposals, in many other cases rhetoric is failing to result in action, and needs are being neglected, particularly when it comes to protection.**

67. **The Special Rapporteur is therefore calling on governments to take urgent action, including action to guarantee indigenous groups free and equal access to the administration of justice. The Special Rapporteur recommends that Governments should take the determined steps needed to combat the discrimination against indigenous people which is often deeply rooted in the operation of State administrative bodies, and put in place effective measures to end impunity for all discrimination against the indigenous population.**

68. **The issues of land, territory and access to natural resources remain central to observing the human rights and fundamental freedoms of indigenous people. They have crucial implications for the indigenous communities' enjoyment of civil and political and economic, social and cultural rights everywhere in the world. The Special Rapporteur wishes to appeal to any governments which have difficulties in these fields to examine how they can cooperate with native peoples to find negotiated and lasting solutions to the ongoing conflicts connected with them. He also asks governments which have**

found satisfactory solutions to such conflicts to put their experience to use in breaking the deadlock in similar situations elsewhere.

69. **The Special Rapporteur has viewed with growing concern the often tragic situation of millions of indigenous women all over the world; discrimination has placed them in a position of substantial and lasting vulnerability. He recommends that governments should act in close and early consultation with indigenous women to formulate and adopt specific measures, projects and programmes to benefit such women and their families.**

70. **The lives and dignity of indigenous children must be protected as a matter of urgency. Governments must establish specific policies and programmes to end the violation of the human rights of millions of indigenous children throughout the world and to cope with the need for social services to genuinely protect those rights.**

71. **The Special Rapporteur notes that, despite the high expectations of 10 years ago, the achievements of the International Decade of the World's Indigenous People can be summarized as modest. For that reason, he welcomes the recommendation made by the Economic and Social Council in its decision 2004/290 that the General Assembly should consider proclaiming a second decade, to bring more dynamism, consolidate existing achievements and pursue other achievements.**

72. **He also wishes the Commission on Human Rights working group on a draft declaration on the rights of indigenous peoples the strength and political will to reach a consensus on that draft, which has its origin in a promise made to the indigenous peoples at the beginning of the International Decade which is now ending.**